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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,095	02/08/2002	Pascal Pons	8707.2137	3696

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EXAMINER

MULLEN, KRISTEN DROESCH

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/073,095	<b>Applicant(s)</b> PONS ET AL.	
	<b>Examiner</b> Kristen Mullen	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/3/05 (response).
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19 is/are allowed.
- 6) ☒ Claim(s) 1 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 4 and 8-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 14 is objected to because of the following informalities: "a second stimulation" in line 21 should be changed to --a second stimulation stage--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, and 5-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Russie et al. (6,615,089).

Regarding claim 1, Russie shows an IMD comprising at least a first stimulation stage (one of 22, 32, 42), including an output capacitor (126), a stimulation terminal (23a, 23b; 33a, 33b; 42a and 42b), a charging circuit (Fig. 2), a first switch (122), means for performing a capture test (50, 51), means for adjusting the stimulation voltage, and means for delivering a backup-stimulation (one of the other stimulation stages 22, 32, 42) and being further characterized in that the means for delivering backup-stimulation comprises: an additional capacitor (126) and a second switch (122), and the additional capacitor comprising a specific capacitor (126 of one of the other stimulation stages 22, 32, 42), distinct from said output capacitor (126 of one the first stimulation stages 22, 32, 34 ) and a second stimulation stage (one of the other stimulation stages 22, 32, 42) having a second output capacitor (126) and a second

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stimulation terminal (one of the other stimulation terminals 23a, 23b; 33a, 33b; 42a and 42b corresponding to one of the other stimulation stages 22, 32, 42), where the specific capacitor comprises the second output capacitor (Col. 3, lines 34-55; Col. 5, line 31-Col. 6, line 1; Col. 6, lines 26-41).

With respect to Claim 5, Russie et al shows the first stimulation stage is one of an atrial stage (42) and a right ventricular stage (22, 32) and said second stimulation stage is the other of the atrial stage and the right ventricular stage (Col. 3, lines 34-55; Col. 5, line 31-Col. 6, line 1; Col. 6, lines 26-41).

Regarding Claim 6, Russie et al. shows the first stimulation stage is one of an atrial stage (42) and a left ventricular stage (22, 32) and said second stimulation stage is the other of the atrial stage and the left ventricular stage (Col. 3, line 66-Col. 4, line 20; Col. 6, lines 26-41).

With respect to Claim 7, Russie et al. shows the first stimulation stage is one of a right ventricular stage (22, 32) and a left ventricular stage (22, 32), and the second stimulation stage is the other of the right ventricular stage and the left ventricular stage (Col. 3, line 66-Col. 4, line 20; Col. 6, lines 26-41).

#### ***Response to Arguments***

4. Applicant's arguments filed 1/3/05 have been fully considered but they are not persuasive. In response to applicant's arguments that Russie does not disclose a second stimulation stage having an additional second specific output capacitor taken from a second stimulation stage, the examiner disagrees. Russie does show a first stimulation stage (for example 22) having a first capacitor (126), and a second stimulation stage (for example 32)

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having a second capacitor (126). Figure 2 is representative of each of the stimulation stages (22, 32, 42), thus each stimulation stage has a separate capacitor (126).

***Allowable Subject Matter***

5. Claims 4 and 8-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claim 14 would be allowable if rewritten or amended to overcome the objection to minor informalities set forth in this Office action.
7. Claims 15-19 are allowed.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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